IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13085 of 2000
with
SPECIAL CIVIL APPLICATION No 12864 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAJIBHAI JAMADIBHAI SAIYED

Versus

STATE ELECTION COMMISSION

Appearance:

1. Special Civil Application No. 13085 of 2000
MR DC DAVE for Petitioner No. 1
MR NV ANJARIA for Respondent No. 1
Ms NANDINI JOSHI, AGP for Respondent No. 1,2
MR BG JANI for Respondent No. 3
MR KV SHELAT for Respondent No. 4

2. Special Civil Application No. 12864 of 2000
M/S.VYAS ASSOCIATES for Petitioner No. 1
MR KV SHELAT for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 31/08/2001

ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, the petitioners, two in number, have challenged the judgment and order dated 13.11.2000 passed by the learned Joint District Judge, Bhavnagar in Election Petition No. 2 of 2000 under the Gujarat Municipalities Act, 1963 (`the Act' for brevity). The learned Judge has allowed the election petition on the ground that the nomination form of Pravinbhai Mulubhai Gadhavi, respondent No. 4 in each of these petitions (the same respondent) for elections from Ward No. 8 of Palitana Municipality was improperly rejected by the Election Officer. Since it was a multiple seat constituency, the election of both the petitioners herein has been declared to be illegal and the seats have been declared to be vacant. The Chief Officer of Palitana Municipality has been directed to give a notice to the Election Commission in accordance with Section 42(1) of the Gujarat Municipalities Act intimating that elections are required to be held for two vacancies of ward No. 5. On receipt of the notice from the Chief Officer, the State Election is directed to take steps for holding election to fill the vacancies in the Palitana Municipality in accordance with Section 42(2) of the Act.

2. Since respondent No. 4 had also filed nomination form for elections from Ward No. 5, which was also rejected on the same ground, similar petition being Election Petition No. 1 of 2000 was also allowed and elections of two candidates from the said two seat constituency were also declared illegal. However, at the hearing of these petitions, along with Special Civil Application No. 12866 of 2000, respondent No. 4 was asked to opt between ward No. 5 and ward No. 8. Accordingly, respondent No. 4 chose to contest these petitions in respect of the elections from ward No.8 only. Hence Special Civil Application No. 12866 of 2000 in connection with the elections from ward No.5 has been allowed earlier by consent of the respective parties, but without prejudice to the rights and contentions of respondent No.4 in these petitions.

3. The facts leading to filing of these petitions, broadly stated, are as under :-

3.1 Respondent No.4 was declared elected as councillor of the Palitana Municipality on 28.12.1994. The term of the municipality was for a period of 5 years from the date of the first meeting which was held on 11.1.1995. Accordingly, the term of the municipality was

to expire on 10.1.2000. As per the provisions of Article 243 U of the Constitution, elections were required to be held before expiry of the term. Accordingly, election program was declared in December, 1999. 13.12.1999 was the date for submitting nomination forms. 15.12.1999 was the date of scrutiny of nomination forms. Polling was to take place on 2.1.2000 and the results were to be declared on the same day.

3.2 Both the petitioners herein as well as respondent No. 4 and a few other candidates filed their nomination forms for elections from ward No. 5. At the time of scrutiny on 15.12.1999, the nomination form of respondent No. 4 was rejected on the ground that by order dated 14.6.1999, the Collector, Bhavnagar had disqualified respondent No. 4 under Section 38 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as `the Act'). The nomination forms of the petitioners herein along with a few other candidates were found to be valid. The polling took place as scheduled on 2-1-2000. On the same day, the present two petitioners were declared to have been elected as councillors from ward No. 5.

3.3 Respondent No.4 herein filed the election petition on 15.1.2000. By the impugned judgment and order dated 13.11.2000, the election petition came to be allowed. The present petitions challenge the said judgment and order whereby the the two petitioners have been unseated on the ground that the nomination form of respondent No. 4 was improperly rejected. The learned Joint District Judge came to the said conclusion on the ground that disqualification of respondent No. 4 under Section 38 of the Act was from the Board which was in existence for the period between 11.1.1995 and 10.1.2000 and that, therefore, respondent No. 4 was not disqualified from contesting for elections for the next term i.e. for the period commencing from 11.1.2000 to 10.1.2005.

4. Since the entire controversy raised in these petitions is about consequence of the order dated 14.6.1999 (Annexure "E" to Special Civil Application No. 12864 of 2000) it is necessary to make a detailed reference thereto.

By application dated 29.4.1998 one Manjulaben U Varsadiya, a Councillor of the Palitana Municipality had moved the Collector, Bhavnagar under Section 38 read with Section 11(2)(c) of the Act for disqualifying respondent No. 4 on the ground that when respondent No. 4 was the President of the Municipality, respondent No. 4 had

employed his relatives in service of the Municipality and had thus incurred disqualification. The grievance was made in respect of the following four appointments :-

(i) Appointment of Sanitary Inspector Devidanbhai Bhimbhai Bhati by order dated 20.2.1998 on a daily wage of Rs.55/-.

(ii) Appointment of Haresh Ratna as Surveyor by Board Resolution dated 30.4.1992 and giving him regular pay-scale of Rs.1320-2040 by resolution dated 31.3.1998.

(iii) Appointment of Mukeshbhai Balia as Junior Clerk by Resolution dated 30.4.1992.

(iv) Appointment of Padubhai D Udhas as a daily wager in the Fire Brigade Department by Resolution dated 30.7.1997.

In view of the above complaint, a show cause notice was issued to respondent No. 4 and after hearing the parties, the Collector, Bhavnagar passed the order dated 14.6.1999 holding that Haresh Ratna and Mukeshbhai Balia were relatives of respondent No.4 and they were appointed as per the orders dated 2.5.1992 passed by respondent No. 4 as President of the Municipality. It was further held that Devidanbhai Bhimbhai Bhati and Padubhai D. Udhas were appointed without following any legal procedure and their wages as daily wagers were paid from the funds of the Municipality. Accordingly, the Collector held that respondent No. 4 had indirect interest in the employment given to the above employees and, therefore, respondent No. 4 had incurred disqualification under Section 38 read with Section 11(3)(c) of the Act. The operative order passed by the Collector, when translated, reads as under :-

"ORDER

In exercise of the powers conferred upon me under Section 38 of the Act, I, Rajkumar, (IAS), Collector, Bhavnagar District, Bhavnagar, disqualify Pravinbhai M. Gadhavi from the councillorship of the present Board of Palitana Municipality as he has incurred disqualification as per the above discussion. I also hereby declare the general seat to ward No. 8 as having fallen vacant".

5. The learned Joint District Judge held that since disqualification order passed by the Collector on 14.6.1999 provided for disqualification of respondent No. 4 from "the present Board" i.e. the Board which then existed on 14.6.1999, there was no disqualification for contesting for elections to the next general board which was to come into existence after 10.1.2000.

6. At the hearing of these petitions, Mr DD Vyas and Mr Dhaval C. Dave, learned counsel for the petitioners have challenged the aforesaid judgment and order of the learned Joint District Judge on the following grounds :-

(i) In view of the provisions of Section 14(2) of the Act and the Government Notification dated 8.12.1965, under which the Government had appointed the District Judge, Bhavnagar, generally for the election cases arising under Section 14, the learned Joint District Judge had no jurisdiction or authority to decide the election cases filed by respondent No. 4. Hence, the impugned judgment and order was without jurisdiction, null and void ab initio.

(ii) In view of the provisions of Section 14(1) of the Act read with Section 2(7)(A) of the Act, respondent No. 4 was not entitled to contest the election. Since the general board of the Palitana Municipality from which respondent No. 4 was disqualified as per the order dated 14.6.1999, was still in existence on the date of filing the nomination forms (13.12.1999) and also on the date of scrutiny (15.12.1999), respondent No. 4 was disqualified from contesting the elections and, therefore, his nomination form was rightly rejected by the Election Officer and the learned Joint District Judge committed an error apparent on the face of the record in holding that the nomination form of respondent No. 4 was improperly rejected.

7. Before dealing with the first contention, it will be necessary to set out the relevant statutory provisions:-

14.(1) If the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question refers or by any candidate for such election such person may, at any time within fifteen days after the date of the declaration of

the result of the election, apply to the District Court of the district within which the election has been or should have been held, for the determination of such question.

(2) An inquiry shall thereupon be held by a Judge, not below the grade of an Assistant Judge appointed by the State Government either specially for the case or for such cases generally; and such Judge may, after such inquiry as he deems necessary and subject to the provisions of sub-section (5), pass an order confirming or amending the declared result of the election, or setting the election aside for the purposes of the said inquiry the said Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such inquiry shall be paid. Such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908. The decision or order shall be conclusive."

8. The submission of the learned counsel for the petitioners is that the election petition can be tried i.e. an inquiry contemplated by sub-section (2) of Section 14 can be held only by a Judge, not below the grade of an Assistant Judge, appointed by the State government either specially for the case or for such cases generally. Since by notification dated 8.12.1965, the District Judge, Bhavnagar was appointed generally for the cases arising under Section 14 of the Act within the Bhavnagar District, the learned Joint District Judge had no jurisdiction to decide the case. In support of the said submission, strong reliance is placed on the decision of a learned Single Judge of this Court in Somalal Nathjibhai Siroyia vs. Arjandas Jodharam, 8 GLR 337.

9. On the other hand, Mr KV Shelat, learned counsel for respondent No. 4 has submitted that under the provisions of the Bombay Civil Courts Act, 1869, the learned Joint District Judge is given co-extensive powers with the District Judge and, therefore, the learned Joint District Judge was competent to hear the election case in question. In support of the said submission, strong reliance has been placed on the decisions of this Court in Kapadwanj Nagarpalika vs. Bharat Petroleum Corporation Ltd., 27(2) GLR 1410 and in Kumar Gangaram vs. Estate Officer, Gujarat Housing Board, 31(2) GLR

9A. Sections 12 and 13 of the Bombay Civil Courts Act, 1869 read as under :-

"12. Power to appoint Joint Judges :- The State Government may appoint in any District a Joint Judge whol shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court.

13. Enactments applied to Joint Judge, Joint Judge's seal - All Regulations and Acts now or hereafter in force and applying to a District Judge shall be deemed to apply also to the Joint Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge."

10. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submission made on behalf of respondent No. 4 that Section 12 of the Bombay Civil Courts Act, 1869 empowers the State Government to appoint in any District a Joint Judge who shall be invested with co-extensive powers and concurrent jurisdiction to the District Judge. Under Section 13 all Regulations and Acts applying to a District Judge also apply to the Joint District Judge. In view of these provisions, there is no manner of doubt that the Joint District Judge did have the jurisdiction to hear the election case. This Court finds no reason not to follow the ratio laid down by this Court speaking through Hon'ble Mr Justice N.H. Bhatt (as His Lordship then was) in Kapadwanj Nagarpalika vs. Bharat Petroleum Corporation Ltd., 27(2) GLR 1410 and by this Court speaking through Hon'ble Mr Justice M.B. Shah (as His Lordship then was) in Kumar Gangaram vs. Estate Officer, Gujarat Housing Board, 31(2) GLR 1006.

11. Reliance placed by the learned counsel for the petitioners on the decision of another learned Single Judge of this Court in Somalal Nathjibhai Siroyia vs. Arjandas Jodharam, 8 GLR 337 is misconceived because in that case by the notification issued by the State Government under Section 15(2) of the Bombay Municipal Boroughs Act, the Assistant Judge of the Panchmahals

District was empowered to hear the election petitions, but in the facts of that case the election petition was heard and decided by the District Judge, Panchmahals. In view of the fact that under the Government notification issued under Section 15(2) of the Bombay Municipal Boroughs Act, the jurisdiction was conferred on the Assistant Judge to try the election petition, this Court held that the District Judge had no jurisdiction to hear the election petition.

In the instant case, there is no dispute about the fact that District Judge, Bhavnagar was empowered to try the election petitions as per the notification dated 8.12.1965. In the instant case, the election petition was heard by the Joint District Judge of Bhavnagar District, who has co-extensive powers and the same jurisdiction as the District Judge as per the provisions of Sections 12 and 13 of the Bombay Civil Courts Act, 1869. Of course, Section 12 of the said Act does carve out an exception regarding the powers of the Joint District Judge, but that exception is not relevant or applicable in the instant case. Therefore, it need not detain us.

In view of the above discussion, the Court finds no substance in the first contention urged on behalf of the petitioners challenging the jurisdiction of the Joint District Judge to hear and decide the election petition in question.

12. Coming to the second contention, it is submitted by the learned counsel for the petitioners on merits that the Election Tribunal was required to consider whether on the date of election, the elected candidate was qualified or was disqualified to fill the seat. The relevant date for considering this question is the date of filing the nomination or at the highest the date of scrutiny. If on that particular day the candidate was not qualified to be elected or disqualified from being the councillor, the nomination form had to be rejected. On the date of nomination, respondent No. 4 was suffering from disqualification as per the order dated 14.6.1999. Even if the argument of respondent No. 4 is accepted that he was disqualified by the order dated 14.6.1999 only from the then existing Board, the same Board was in existence till 10.1.2000. Therefore, on 13.12.1999 (the date of nomination) and even on 15.12.1999 (the date of scrutiny) respondent No. 4 was under a disability which had not ceased to exist. Strong reliance has been placed on the decisions of the Apex Court in Chatturbhuj Vithaldas Jasani vs. Moreshwar Parashram, AIR 1954 SC 236, Amrit

Lal Ambalal Patel vs. Himathbhai Gomanbhai Patel, AIR 1968 SC 1455, Vidya Charan Shukla vs. Purshottam Lal Kaushik, AIR 1981 SC 547 and the Queen's Bench decision in Ford vs. Newth, (1901) 1 Q.B. 683.

It is further contended that since the employment of the persons for which respondent No. 4 was disqualified under Section 38 of the Act still continues, the disability still continues for respondent No. 4 as per the decision of the Bombay High Court in Ramayya vs. State of Bombay AIR 1960 Bom. 46.

13. On the other hand, Mr KV Shelat, learned counsel for respondent No. 4 has submitted that by order dated 14.6.1999 respondent No. 4 was disabled from continuing to be a member of the `present board' and, therefore, upon expiry of that board on 10.1.2000, there was no disqualification attached to respondent No.4. Accordingly, he could not have been disqualified from contesting for election to the office of the councillor for the Board of the Municipality which was to commence from 11.1.2000. Otherwise, the order dated 14.6.1999 of the Collector would stand modified as if respondent No. 4 was not merely disabled from continuing to a member of the `present board' between 11.1.1995 and 10.1.2000, but the petitioner shall also be treated as disqualified from contesting election for the office of the councillor of the subsequent board.

14. Before dealing with the rival submissions, it is necessary to analyze the provisions of Sections 11, 14(5), 38 and 41 of the Act. Section 11 of the Act provides for general disqualifications for becoming a councillor. Disqualification is provided in various contingencies. Subsection (1) thereof provides for disqualification in case of conviction, imprisonment, bankruptcy, insolvency, lunacy and other cases.

Under sub-section (2) of Section 11, disqualification is also provided in case of-

(a) a person who is a part time officer or servant of a municipality;

(b) a person who failed to pay any arrears of any kind due by him to the Municipality within three months after a special notice has been served upon him or

(c) (subject to certain exceptions) a person who has directly or indirectly by himself or his

partner any share or interest in any work done by order of a municipality or in any contract or employment with or under or by or on behalf of a municipality;

(d) (subject to certain exceptions) a person who has directly or indirectly by himself or his partner any share or interest in any transaction of loan or money advanced to, or borrowed from, any officer or servant of the municipality.

Sub-section (3) of Section 11 provides for the exceptions referred to hereinabove in clauses (c) and (d) of sub-section (2). The said exceptions are not relevant for the purposes of the present controversy. Sub-section (4) of Section 11 provides for disqualification on account of disqualification under the Defection Act (Gujarat Act No. 23 of 1986).

Section 37 provides for removal from office any councillor or any President/Vice President of the Municipality for misconduct etc.. Sub-section (2) thereof provides that the President/Vice President so removed shall not be eligible for re-election as a President/Vice President during the remainder of the term of the municipality.

Section 38 provides that if any councillor during the term for which he has been elected or nominated becomes subject to any disqualification specified in section 11, subject to the orders to be passed by the Collector "he shall subject to the provisions of subsection (2) be disabled from continuing to be a councillor and his office shall become vacant".

Subsection (2) of section 38 requires the Collector to give the Councillor an opportunity of being heard.

Section 41 provides for eligibility of certain members for re-election in the following terms :-

"Any person disabled under section 38 from continuing as a councillor shall be eligible for re-election on his disability ceasing."

15. The controversy sought to be raised by respondent No.4 was when can it be said that the disability under Section 38 ceases. Section 38 provides for four different categories of disabilities including the disqualification specified in Section 11. Section 11

provides for various contingencies in which a person would incur disqualification for becoming a councillor. As far as disqualification on the ground of bankruptcy/insolvency and unsoundness of mind, salaried employment in Government/Panchayat/Municipality or non-payment of arrears is concerned, it is clear that the moment bankruptcy/insolvency or declaration by the Court about unsound mind goes or the status of the person as a Judge, salaried employee of Government/Panchayat/ Municipality or part time office or servant of a Municipality goes, the disability would cease so also when the arrears are paid up, the disability would cease. These are all cases where the disability has an element of continuity.

However in case where a person has been convicted by a Court of an offence under the Untouchability (Offences) Act or under the Bombay Prohibition Act and sentenced to imprisonment for not less than six months, the disability continues for a period of four years since conviction or where there is sentence of imprisonment, for four years since the date of release. Similarly, in case of removal under Section 37, disability will continue for four years from the date of removal. The second category cases are all cases where the event giving rise to disability is `one time event' and the legislature has expressly provided a four year period for such disqualification to continue.

16. Mr Shelat's contention is that the legislature has not expressly provided for such period where disqualification has taken place on the ground that the councillor has any share/interest in any work done by order of a municipality or in any contract/employment with/under or by or on behalf of a municipality nor has the legislature made an express provision for the period of disqualification where the disability has arisen on account of a councillor having any share/interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the municipality.

17. It is pertinent to note that Section 38(1)(a) provides that if any councillor during the term for which he has been elected or nominated becomes subject to any disqualification specified in Section 11, he shall be disabled from continuing to be a Councillor. Section 38(1) itself thus contemplates that disqualification under section 38 is with reference to the term for which the councillor has been elected and, therefore, disability from continuing to be a councillor is only with reference to the term for which the councillor has

been elected and during which he has been disqualified. Section 41 also refers to the eligibility for re-election on the disability ceasing. Hence, if a councillor is disqualified under Section 38(1)(a) read with Section 11(1) on the ground of bankruptcy/insolvency or unsoundness of mind, for the remainder of the term of the municipality he cannot be a councillor. If after disqualification and after the seat is declared vacant, there is a by-election but before the by-election, if the disability has ceased, (e.g. bankruptcy/insolvency or unsoundness of mind has gone as declared by orders of the competent Court) such a candidate cannot be disqualified from contesting for re-election on the ground of his previous disability. He has to be held to be eligible for re-election because his disability has ceased. Similarly even if it is not a case of by-election but it is a case of general elections after the expiry of the term or general elections on account of the general board of municipality being dissolved prematurely, such a person cannot be disqualified from contesting as a councillor if his disability has ceased in the meantime i.e. before the date of scrutiny of nomination forms. The provisions of the Act do not contemplate any disqualification for all time to come even in case of conviction of any serious offence and imprisonment for any number of years. Even in case of such conviction and imprisonment, the maximum period of disability is four years from the date of conviction / four years from the date of release, as the case may be. Similarly, if the President/Vice President of the Municipality is removed under Section 37 of the Act for a very serious misconduct, the disqualification will remain only for a period of four years from the date of removal. Wherever the legislature wanted any disqualification to continue beyond the period of disability or beyond the event which gave rise to the disqualification, the legislature has provided for a specific period during which the disqualification shall continue. The legislature has not provided for any indefinite period of disqualification for contesting for election nor do any provisions of the Act lay down that the councillor disqualified on the ground of having any share or interest in any contract or work or employment shall be disabled from contesting elections for all time to come.

18. The Court, therefore, finds substance in the argument that the order of disqualification passed under Section 38 by itself does not provide for any indefinite embargo on the former councillor's contesting elections after expiry of the term during which he is disqualified. Even on facts the order dated 14.6.1999 of the Collector

under Section 38 of the Act clearly states that respondent No.4 herein was disqualified from "the present Board" i.e. the Board which was then existing on 14.6.1999. Even so, while holding that the petitioners' disqualification from Councillorship pursuant to the Collector's order dated 14.6.1999 under Section 38 of the Act did not disqualify respondent No. 4 from contesting elections as Councillor of the Municipality for the term after 10.1.2000, respondent No.4 was still required to clear the hurdle under section 11 of the Act. Clause (c) of subsection (2) of section 11 provides as under:

11(2) No person -
(a) .....
(b) .....

(c) who, save as hereinafter provided, has directly or indirectly, by himself or his partner any share or interest in any work done by order of a municipality or in any contract or employment with or under or by or on behalf of a municipality, or

(d) .....

may be a councillor of such municipality.

While a decision is required to be rendered by the Collector under Section 38 for deciding whether any elected councillor (during the term for which he has been elected) has been disabled from continuing to be a councillor on account of any disqualification specified in section 11, no such decision of the Collector is required when the case of a candidate is to be considered under the provisions of section 11 for deciding whether he is disqualified from contesting for the office of councillor. It is for the Election Officer to decide whether a candidate has incurred any of the disqualifications enumerated in section 11 of the Act. In the instant case, all that the Election Officer appears to have done is to refer to the disqualification order dated 14.6.1999 and held that respondent No.4 was disqualified under the provisions of section 38 read with section 11 of the Act and that disqualification continued on the date of scrutiny of the nomination forms. That part of the decision of the Election Officer, insofar as the Election Officer relied solely on the order dated 14.6.1999 disabling respondent No. 4 from continuing as a councilor for the term between 14.6.1999 and 10.1.2000 must be treated as illegal. The question still remains

whether respondent No.4 was disqualified from contesting as a councillor in view of the bar pleaded under sub-section (2)(c) of section 11 of the Act.

19. As regards reliance placed by Mr Vyas on the decision of the Apex Court, particularly in Amrit Lal Ambalal Patel vs. Himatbhai G. Patel, AIR 1968 SC 1455, that was a case where the concerned candidate had not completed 25 years of age on the date of scrutiny of nomination forms and, therefore, the Apex Court held that the person who was not eligible for contesting elections on the date of nomination cannot be considered as eligible merely because he would have completed 25 years of age before the date of polling. As already discussed above, there is a distinction between a continuing disability in praesenti and disqualification on account of a past event. In the instant case, the Election Officer had rejected the nomination form of respondent No.4 solely on the basis of the order dated 14.6.1999 disqualifying respondent No.4 from councillorship of the municipality from the Board which existed on 14.6.1999. Hence, the decision of the Apex Court which is applicable in case of a continuing disability, cannot apply where the disqualification is made solely on the basis of a past event. However, in the facts of the instant case, the principle laid down by the Hon'ble Supreme Court would be applicable if it is found that on the date of scrutiny of nomination forms, respondent No.4 was subject to disqualification under Section 11 (2)(c) of the Act.

20. Mr DD Vyas and Mr Dhaval Dave, learned counsel for the petitioners have submitted that the persons whose employment led to disqualification of respondent No. 4 as per the order dated 14.6.1999 are continuing in employment of the Municipality and, therefore, disqualification is still subsisting.

Mr KV Shelat, learned counsel for respondent No.4, however, does not admit this allegation.

In view of the above controversy, it would be just and proper to remand the matter to the Election Tribunal for deciding afresh whether respondent No.4 had incurred disqualification under section 11 (2)(c) of the Gujarat Municipalities Act, 1963 on the date of scrutiny i.e. 15.12.1999. In other words, the Tribunal shall ascertain whether the persons whose employment led to disqualification order dated 14.6.1999 had continued to be employees of the Palitana Municipality on 15.12.1999.

21. In view of the above discussion, the petitions

are partly allowed. The decision dated 13.11.2000 of the Tribunal is set aside and the matters are remanded back to the Election Tribunal for hearing Election Petition No.2 of 2000 in accordance with law and in light of the observations made hereinabove.

Having regard to the fact that the elections were held in January, 2000, it would be just and proper to direct the Election Tribunal to hear and decide the Election Petition No.2 of 2000 pursuant this order of remand as expeditiously as possible and preferably within two months from the date of receipt of writ of the Court or a certified copy of this judgment.

Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.S. Shah, J.)

sundar/zgs